IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 95 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PATEL CHANABHAI PARSHOTTAMBHAI

Appearance:
MR ND GOHIL, APP, for Petitioner
MR BUDHBHATTI for Respondents No. 1, 2, 3, 4

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE A.L.DAVE

Date of decision: 17/08/2000

ORAL JUDGEMENT:- (Per Dave, J.)

1. This Criminal Appeal is preferred by the State of

Gujarat against a judgment and order dated October 22, 1992, passed in Sessions Case No.19 of 1992 by the learned learned Additional Sessions Judge, Rajkot, at Gondal, acquitting the present respondents of the charges under Section 302 read with Section 34, 498-A read with Section 34 and 304(II) read with Sections 34 and 201 of Indian Penal Code.

2. The facts leading to the present appeal can be narrated thus :-

2.1 Complainant-Kababhai Tapubhai's daughter-Hansa was married to accused No.2 about two years prior to the 29th September, 1991. Accused No.1 is the father of accused No.2 and accused No.4 is the mother of accused No.2, whereas accused No.3 is the brother of accused No.2. The accused persons and the deceased used to stay at Vimalnagar. As per the prosecution case, complainant-Kababhai Tapubhai had given dowry in the marriage of deceased-Hansa, but the accused persons were not satisfied with that and, therefore, they used to taunt and ill-treat deceased-Hansa. Whenever Hansa went to her parental house, she used to complain about the ill-treatment and taunting meted out to her. On the 28th September, 1991, Hansa left her marital home in late evening and then was not heard of. The in-laws/accused persons searched for her. On the 29th September, 1991, one Ramjibhai Naradbhai was sent from Vimalnagar to the house of Kababhai Tapubhai for informing the missing of Hansa since 10.00 P.M. of the 28th September, 1991. They also sent a word to the parents of Hansa. They collectively searched for Hansa, but in vein. The parents, therefore, went back to their home situated a couple of kilometres away from the marital home of the deceased/house of the accused persons. Kababhai Tapubhai lodged a First Information Report on the 29th September, 1991, before Jamkandorna Police. On the 1st October, 1991, one Patel Premjibhai Bhavanbhai of Vimalnagar informed the police that dead body of Hansa was floating in the panchayat well situated in the outskirts of village Vimalnagar. The dead body was taken out of the well and postmortem was performed. It was found in the postmortem that the deceased was done to death by throattling and the dead body was then thrown into the well. The trachea and the hyoid bone was found to be fractured. The police, therefore, after recording the statements and collecting necessary evidence, charge sheeted the accused persons for offences punishable under Sections 302, 304-B, 498-A read with Sections 34, 114 and 201 of Indian Penal code.

2.2 After the case was committed to the Court of Sessions by learned Judicial Magistrate, First Class, Dhoraji, a charge was framed against the accused persons for the offences punishable under Sections 302 read with Section 34, 498-A read with Section 34, 304-B read with Section 34 and 201 of Indian Penal Code. The accused persons pleaded not guilty to the charge and expressed their desire to face the trial.

2.3 The prosecution led oral and documentary evidence for proving the case against the accused. After recording the statements of the accused persons under Section 313 of the Code of Criminal Procedure, the Trial Court came to conclusion that the prosecution failed to establish, beyond reasonable doubt, the guilt of the accused persons and acquitted all four accused persons of the charges framed against them.

2.4 Aggrieved by the said judgment and order of the learned Additional Sessions Judge, Gondal, the present appeal is preferred.

3. Learned Additional Public Prosecutor Mr. Gohil has taken this Court through the evidence as well as the judgment of the Trial Court. The appellant has tried to assail the judgment and order of the Trial Court on the ground that the Trial Court has committed an error of discarding the evidence of a witness, who had turned hostile but who broadly supported the case of the prosecution, namely, witness Jayaben Gobarbhai, Ex. 27. It was contended that there is ample evidence to indicate that the deceased was ill-treated by the accused persons; that she was taunted; and that she was subjected to cruelty for not complying with the dowry demands. Mr. Gohil submitted that, although there is no direct evidence, there is sufficient evidence to indicate that the deceased was done to death and that it was a case of homicide. He submitted that there is material to indicate that the accused persons were seen last together with the deceased and that previous conduct of the accused persons is also established through the deposition of the complainant and other witnesses. The Trial Court, therefore, ran into an error of not appreciating these pieces of evidence which connect the accused persons with the offence of murder. Mr. Gohil, therefore, urged that this appeal may be entertained and the accused be convicted for the offences with which they are charged.

4. Mr. Budhbhatti, learned advocate appearing for the respondents-accused persons, has vehemently opposed

this appeal. He submitted that this is an appeal by the State against acquittal and, therefore, the Court may not interfere with the judgment unless the view taken by the Trial Court is found to be manifestly erroneous leading to miscarriage of justice. He submitted that this is a case of circumstantial evidence. There is no direct evidence to connect the accused persons with the offence. He further submitted that this being a case of circumstantial evidence, it is incumbent upon the prosecution to establish the guilt of the accused persons by establishing a strong and unbroken chain of circumstances connecting the accused with the offence. In the instant case, no such chain is established and, therefore, this Court may not entertain this appeal. He submitted that assuming for the moment that the view canvassed by the appellant is found to be possible, the view taken by the Trial Court is not impossible and where two views are possible, the Court may not entertain an acquittal appeal. In support of his say, Mr. Budhbhatti has placed reliance on the decision in the case of Balu Lodhi v. State of U.P., 1987 Criminal Law Journal 1119 and the decision in the case of Totasingh v. State of Punjab, 1987 Criminal Law Journal 974. Mr. Budhbhatti, therefore, urged that the appeal may be dismissed.

5. Before adverting to the facts of the case, the law, as laid down by various pronouncements of the Apex Court, in respect of cases of circumstantial evidence and the cases where acquittal appeal is preferred may be taken into consideration.

5.1 In State of Maharashtra v. Annappa Bandu Kavatage, A.I.R. 1979 SC 1410, it is settled that a Court can act on circumstantial evidence if the circumstances proved are complete and of conclusive in nature, so as to be fully inconsistent with the innocence of the accused and are not explainable on any other hypothesis except the guilt of the accused. In Pohalya Motya Valvi v. State of Maharashtra, A.I.R. 1979 SC 1949, it is laid down that each circumstance relied upon by the prosecution must be established by cogent succinct and reliable evidence and the circumstances relied upon must be such as cannot be explained on any hypothesis except guilt of the accused. Each circumstance must be of an incriminating character and all the proved circumstances must provide a complete chain, no link of which must be missing and they must unequivocally point to the guilt of the accused and exclude any hypothesis consistent with his innocence.

5.2 In case of acquittal appeal, the High Court may

interfere only where a manifest error is indicated to have been committed by the Trial Court which has led to miscarriage of justice. It is also a settled proposition of law that High Court may not interfere with acquittal where two views are possible and Trial Court has given benefit to the accused. The Court has to be slow in interfering in such cases. The Court may interfere with order recording acquittal where the finding of the Trial lCourt is patently illegal, palpably wrong and manifestly erroneous or demonstrably unsustainable.

6. With the above legal propositions, the present case has to be examined .

7. In the instant case, the medical evidence indicates that the deceased died out of asphyxia due to throttling. The hyoid bone was found to have been broken. This supports the medical conclusion that the deceased was throttled. However, it requires to be noted that there were no marks of any external injury round the neck either in form of ligature marks or any other marks. All the same, it is a case of homicidal death as held by the Trial Court.

8. It is an undisputed fact that there is no eye-witness to the incident. There is no evidence whatsoever to indicate as to who throttled the deceased or to indicate how the dead body of the deceased came into the well. The evidence, therefore, is of purely circumstantial nature. Therefore, what is required to be examined is whether the prosecution could successfully establish an unbroken chain of circumstances of incriminating character, on one end of which are the accused and on the other end is the crime.

9. The prosecution has examined following witnesses:-

(1) P.W. No.1-Kababhai Tapubhai (Ex.15).
(2) P.W. No.2-Dr. L.B. Donga (Ex.17).
(3) P.W. No.3-Maniben Kababhai (Ex.19).
(4) P.W. No.4-Vrujlal Harji (Ex.21).
(5) P.W. No.5-Amrut Bhutabhai (Ex.22).
(6) P.W. No.6-Ramjibhai Naradbhai (Ex.23).
(7) P.W. No.7-Premji Bhavan (Ex.24).
(8) P.W. No.8-Bhagwanji Nanji (Ex.25).
(9) P.W. No.9-Bhutabhai Chhaganbhai (Ex.26)).
(10) P.W. No.10-Jayaben Gobarbhai (Ex.27).
(11) P.W. No.11-Bhavansinh Bachubha (Ex.28).
(12) P.W. No.12-Ranjit Arjan (Ex.31).
(13) P.W. No.13-Prafulchand Keshavlal (Ex.32).

(14) P.W. No.14-Bhadabhai Chhaganbhai (Ex.33).
(15) P.W. No.15-Popatbhai Vastabhai (Ex.34).
(16) P.W. No.16-Jayaben Jasmatbhai (Ex.35).
(17) P.W. No.17-Shantaben Muljibhai (Ex.36).
(18) P.W. No.18-Mansukh Bhikhabhai (Ex.37).
(19) P.W. No.19-Jayantibhai Lakhmanbhai (Ex.38).
(20) P.W. No.20-Ranjitsinh Jugaji Vaghela (Ex.46).
(21) P.W. No.21-Makkambhai Hirabhai Patel (Ex.49).
(22) P.W. No.22-Mamad Hasambhai (Ex.50).

10. None of the above stated witnesses has witnessed the incident. The prosecution has tried to connect the accused persons with the offence on the basis of the evidence of the complainant and other witnesses, who assert that there was dissatisfaction on the part of the accused persons regarding dowry and that the deceased used to complain of ill-treatment, taunting and harassment by the accused persons on this count. This version of the prosecution witnesses did not find favour of acceptance with the Trial Court for the reasons that this version suffered from the defect of improvements in the original story, lacked other cogent supportive material and the conduct of the witnesses.

11. It requires to be noted that apart from the above circumstances, there is only one circumstance which can be argued to be indicative of guilt of the accused. That circumstance is of the accused persons (respondents No.1 and 2) having been seen together with the deceased. That evidence is that of Jayaben Gobarbhai, who has been examined at Ex.27. The witness has been declared hostile. According to her, on the day on which the deceased disappeared, she had gone at about 9.00 P.M. to attend the nature's call. According to the prosecution version, at that time, the witness had seen deceased-Hansa going towards the outskirts of the village, who was followed by accused Nos.1 and 2. But, in her deposition, witness-Jayaben does not support this version. In examination-in-chief, she denies to have seen either the deceased or accused Nos.1 and 2. After having been declared a hostile witness, in cross-examination to the Prosecutor, she admits that she had seen deceased-Hansa going hastily towards the outskirts of the village, but she categorically denies to have seen accused Nos.1 and 2 following her. She denies the suggestion during cross-examination to the Prosecutor that there were frequent quarrels in the house of the accused with Hansa. Barring this evidence, there is no other evidence to indicate any involvement of the accused persons with the death of the deceased in proximity either in terms of time or in terms of the place or the

event.

12. The only circumstance that is tried to be shown and asserted for conviction of accused persons by allowing this acquittal appeal is the evidence of witnesses which indicates that there was dowry demand and resultant quarrels and ill-treatment to the deceased. To prove the case of dowry demand, dissatisfaction, taunting and ill-treatment to the deceased, the prosecution has examined Kababhai Tapubhai, the father of the deceased, at Ex.15. He categorically admits that no ill-treatment or taunting was meted out to Hansa in his presence. He is found to have made notable improvements in his deposition as compared to his version to Police. To make out a case of ill-treatment, an attempt is made to show that the deceased was not permitted to go to her parental house on festival days and for that, a story is made out that his son Gopal had gone to fetch Hansa and the accused persons did not permit her to go with Gopal and he, therefore, approached Bhutabhai and complained of this treatment. This entire version finds no place in his original version about he having sent Gopal to fetch Hansa. Against this version, if deposition of Bhutabhai (Ex.26) is seen, he does not support the case of the witness that Kababhai had approached him and complained that accused persons did not permit Hansa to go with Gopal. Likewise, he also adds certain other incidents regarding demands of dowry having been complained of by Hansa to him and he having talked to accused No.2 that there was a draught and, therefore, he could not comply with the dowry demands and he would meet with them in the following years as and when the crop is good and that accused No.2 said that he would talk to his family members and Hansa would not be harassed. This witness-Kababhai Tapubhai has made such improvements in his version to suit the requirements of the prosecution case.

13. Another witness Maniben, wife of Kababhai, has been examined at Ex.19. She also stated that Gopal had gone to fetch Bai Hansa, but the accused persons did not permit Hansa to go with him. She also improved her version in her deposition as compared to her original statement. These improvements are in respect of demand of dowry and ill-treatment although during cross-examination she did not admit these improvements, but they were proved through the deposition of the Investigating Officer.

14. Jayaben Jasmatbhai, aunt of the deceased, has examined at Ex.35. She stated that deceased-Hansa had

complained her of ill-treatment by the accused persons. She admitted in her cross-examination that, in her statement before police, she had not stated that Hansa had complained to her that her husband, mother-in-law, father-in-law and brother-in-law were harassing her. She also admits that she had not stated in her statement before the Police that Hansa had told her that her mother-in-law, father-in-law and husband used to taunt for not getting bangles, necklace and fan. Thus, the version emerging from deposition of this witness regarding ill-treatment is also a subsequent improvement.

15. Witness Shantaben Muljibhai has been examined at Ex.36. She did not support the prosecution case. She has been declared as turned hostile and, in cross-examination to the Public Prosecutor, she stated that Hansa had told her about frequent beating by her husband, brother-in-law and parents-in-law for golden bangles, golden necklace and fan. She said that she did not remember that earlier but then she remembered that Hansa had told her about this. During cross-examination, she admitted that after the marriage, whenever Hansa came to her parental house during festival days, she and Hansa did not have any talk. She also admitted that except this festival occasions, Hansa had not come to her parental house after her marriage. Thus, her deposition does not carry the prosecution case any further.

16. Witness-Mansukhbhai Bhikhabhai (Ex.37), who also was examined by the prosecution to establish the case of dowry demand and ill-treatment, did not support the prosecution case and was treated as hostile witness. Witness-Jayantibhai Lakhmanbhai (Ex.38) also sailed in the same boat.

17. It is amply clear, therefore, that the evidence led by the prosecution to indicate ill-treatment or harassment for dowry is not reliable.

18. It requires to be noted that the F.I.R. given by the father of the deceased was given late. Not only that, it was given after due deliberations and consultation of a legal expert and still it is silent about the dowry demand or ill-treatment. Witnesses-Lalabhai and Naradbhai, referred to in the deposition of Kababhai Tapubhai, have not been examined. They were referred to by Kababhai Tapubhai to seek support about the treatment given to the deceased by the accused persons, but they have not been examined and the version given by Kababhai Tapubhai has been found to be an improvement. It also requires to be noted that the

charge of murder is not established at all against the accused/respondents because there is not an iota of evidence to indicate any involvement of any of the accused with the murder of the deceased except the deposition of Bai Jaya (Ex.27), who also did not support the prosecution case.

19. The learned Additional Sessions Judge has examined the deposition of these witnesses as also examined and discussed these various facets of the prosecution evidence and has found that the evidence led by the prosecution is insufficient to prove any of the charges levelled against the accused persons. We are in full agreement with the reasoning adopted by the learned Additional Sessions Judge and find that no interference is required by us in this acquittal appeal.

20. Foir the foregoing reasons, we find no merit in this appeal. The appeal merits dismissal and, therefore, the same is hereby dismissed and the judgment and order in Sessions Case No.19 of 1992 is confirmed. The muddamal be disposed of in terms of the direction given by the learned Sessions Judge in the impugned judgment. Bail bond of the respondents be cancelled.

[M.H. KADRI, J.]

[A.L. DAVE, J.]

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